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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	Ralf Reimelt et al
Appln. No.	09/899,502
Filed:	July 6, 2001
Art Unit:	2856
Examiner:	R. Frank
Title:	Apparatus for determining and/or monitoring the filling level of a product in a container

REQUEST FOR REHEARING

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the provisions of 37 CFR 41.52, Applicant/Appellants seek a rehearing from the Board of Appeals their Decision on Appeal as it pertains to the affirmance of the Examiner's final rejection of claims 13-20 as unpatentable under 35 U.S.C. 103 over Lutke and Feese.

Decision on Appeal

On page 5 of the Decision, the Board states:

With respect to independent claim 13, Appellants argue at pages 3-5 of the Brief, that Freese fails to teach the "twisted together" feature of claim 13. Appellants then point out that there is a difference between wire twisted about the axis of the cable and wire twisted about its own axis. The Appellant goes on to argue, "[t]he term 'together' would have no meaning if twisting about its own axis were intended [by the limitation of claim 13]." We find Appellants' argument unpersuasive.

The Board then states:

Appellants' specification shows a cable formed from plural wires at figure 2. Appellant argues that "twisted together" should be narrowly defined as twisted about the axis of the cable. Note that Appellants' figures 2 and 3 shows such a twisting together. However, Appellants' figure 2 also shows that the wires are twisted into a single group.

and:

Upon our review of Appellants' specification, we fail to find any definition of the term "together" that is different from the ordinary meaning. We find the ordinary meaning of the term "together" is best found in the dictionary. We note that the definition most suitable for "together" is "into a single group".

We appreciate Appellants' position that "twisting together" is only a twisting about the axis of the cable. However, we find that the claim language does not preclude reading on twisting into a single group that uses twisting wire about its own axis. We separately note that Freese specifically teaches that his wires are "twisted together" at column 1, line 19.

REMARKS

Applicant/Appellants do not understand how a dictionary definition, namely "into a single group", which would appear to favor Applicant/Appellants' position, is concluded differently by the Board. In other words, if the Board in fact does understand Applicant/Appellants' position that "twisting together" is only a twisting about the axis of the cable, then they must find for Applicant/Appellants because Applicant/Appellants are seeking an understanding which is consistent with the Board's chosen definition of the terms "together". The definition which the Board is applying would, it is respectfully submitted, excludes the teaching of both Lutke and Feese. Feese shows nothing remotely close to Fig. 2 of the present application.

In the recently decided case of *Phillips v. AWH Corp.*, 35 USPQ 2d, 1321 (Fed. Cir. 2005), the Federal Circuit instructed and affirmed a standing rule that the meaning of terms in a claim can be understood in light of their "ordinary and customary meaning" as this meaning is understood by those skilled in the art. Also, citing, *Moba B.V. v. Diamond Automation, Inc.*, 66 U.S.P.Q. 2d 1429, (Fed. Cir. 2003), the Court stated:

> The best indicator of claim meaning is its usage in context as understood by one of skill in the art of the same invention.

It is respectfully submitted that when this test is applied, those skilled in the art would not look at Feese and see Fig. 2 of the present invention.

On rehearing, the Board is urged to reverse their previous decision and find claims 13-20 also patentable.

Respectfully submitted,

Date: Sept. 12, 2005

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